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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

THOMAS G. BASSLER, TEMPORARY ADMINISTRATOR
OF THE ESTATE OF
APOLINAR "PAUL" BENAVIDES, DECEASED
And
STELLA BENAVIDES,

Petitioners

VS.

COUNTY OF WILSON
And
MARVIN H. BAUMANN, SHERIFF
INDIVIDUALLY AND IN HIS
OFFICIAL CAPACITY,

Respondents

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Marvin H. Baumann, Sheriff
Individually and in his
Official Capacity

QUESTION PRESENTED

While fact issues may have existed as to the conduct of the deputies involved, the Petitioners offered no evidence as to the inadequacies of the hiring or training policies, no evidence that policies were the result of deliberate indifference, and no evidence that the policies caused the prisoner's injuries. As a matter of law, there was no violation of the prisoner's rights by the county or the sheriff.

PARTIES TO THE PROCEEDINGS

The caption adequately sets forth the parties. However, Stella Benavides is a not a proper party. Her causes of action were limited to state claims for loss of consortium and mental anguish. She presents no federal issues.

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NO. 91-1981

IN THE

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OCTOBER TERM, 1991

THOMAS G. BASSLER, TEMPORARY ADMINISTRATOR
OF THE ESTATE OF
APOLINAR "PAUL" BENAVIDES, DECEASED
And
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VS.

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**BRIEF IN OPPOSITION TO
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FOR THE FIFTH CIRCUIT**

The Respondents, Wilson County, Texas and Marvin H. Baumann file their brief in opposition to the petition for writ of

certiorari and request that the petition be denied.

I.

STATEMENT OF THE CASE

A. THE INJURY.

Paul Benavides was arrested and placed in the Wilson County Jail. While in jail, he suffered a spinal injury. The Respondents offered evidence, including the testimony of several inmates, that Mr. Benavides, while highly intoxicated, injured himself when he hurled himself against a door. The Petitioners offered Mr. Benavides' testimony that he was pushed and, as he was falling, struck his head against a bed or other object in the cell.

The deputies on duty did not realize the seriousness of the Petitioner's injuries. This was due in part to Mr. Benavides' intoxication and due in part to statements to

the deputies from family members that Mr. Benavides had been institutionalized and had previously feigned a similar injury.

Sheriff Baumann was not present at the jail when the injury occurred and was not informed of Mr. Benavides' condition when he briefly visited the jail on that Sunday. When finally advised that Mr. Benavides would not get up, he directed that an ambulance be summoned.

After the incident, Sheriff Baumann requested an investigation by the Texas Rangers. On the advice of counsel, the Petitioners refused to cooperate. The Rangers' conclusion was that Mr. Benavides had injured himself.

The Petitioners brought suit against Wilson County and Sheriff Baumann alleging civil rights violations because of the failure to properly hire and train deputies.

B. **THE HIRING POLICY.**

Before hiring the deputies involved, Sheriff Baumann personally interviewed each prospective employee. He checked to see if they had a criminal history. He checked their credit history and spoke with their previous employers. To be licensed by the state, each deputy had to meet the educational requirements, complete training, and have a physical and psychological examination. All the deputies satisfied these requirements.

The Petitioners offered no evidence as to any deficiencies in this procedure. Instead, Petitioners focused on two deputies' medical problems. The admissibility of the evidence was contested and the Petitioners have overstated the nature of the ailments. More importantly, none of the psychological problems impeded their duties. To the

contrary, the evidence was that they had never been previously negligent in their duties.

C. **THE TRAINING POLICY.**

To become licensed peace officers, all three deputies received 320 hours of instruction, including courses on the use of force and emergency medical care. To become reserve officers, they each received 10 hours of first aid training and C.P.R. instructions. As licensed jailers, two deputies received 36 more hours of instruction, including a course on evaluating a prisoner's physical condition. The Petitioners offered no evidence of any defect or inadequacy in this training.

II.

REASONS FOR DENYING PETITION FOR WRIT

The Petitioners have failed to set forth any special or important reason for the granting of their petition. See, SUP.CT.R. 10. The Petitioners do not assert a conflict

between decisions of other courts of appeals. Compare, Braxton v. United States, _U.S._, 111 S.Ct. 1854, 1857, 114 L.Ed.2d 385 (1991). Almost in passing, they claim a conflict with this Court's decision. (Petition, p. iii). However, in their petition, the conflict is not explained. Indeed, the Court of Appeals' decision is in harmony with this Court's opinion in City of Canton, Ohio v. Harris, 489 U.S. 378, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989).

The Petitioners do not assert that the case involves undecided questions of federal law. Rather, the case involves the application of existing law to the facts of this case. It involves only the absence of evidence to support Petitioners' claim. The case does not involve issues of importance to the public; instead, it is limited only to the interest of the parties. See, Rice v. Sioux

City Memorial Parks Cemetery, 349 U.S. 70, 75 S.Ct. 614, 619-620, 99 L.Ed.2d 897 (1959).

The Petitioners assert that the case involves a first time violation of civil rights. (Petition, p. 8). The assertion is incorrect; both lower courts found no civil rights violations by the Respondents. The petition should be denied.

III.

RESPONSE TO PETITIONERS' CLAIM

Respondents will separately respond to the contentions made by Petitioners.

A. IMMUNITY WAS NOT PART OF THE COURT OF APPEALS' DECISION.

The Petitioners contend that a governmental unit has no immunity from

liability for claims under 42 U.S.C. § 1983. (Petition, p. 9).[1] However, neither the Court of Appeals' opinion nor the district court's judgment relied on immunity in disposing of the Petitioners' claims.

The Petitioners also apparently contend there was sufficient evidence to establish a culpable state of mind. In support, they quote part of the Court of Appeals decision in which the Court found an issue of fact as to the conduct of the three deputies on that Sunday. (Petition, pp. 10-11). However, as the Court of Appeals observed in the following paragraphs, the Petitioners sued the county and the sheriff, not the three deputies. Benavides v. Wilson County, 955 F.2d 968, 972

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[1] The Petitioners refer to Mr. Benavides' Eighth Amendment rights which are not implicated since Mr. Benavides was a pretrial detainee. However, the standard for determining the Respondents' liability is not affected. See, City of Canton, Ohio v. Harris, supra, 109 S.Ct. at 1204-1205, n. 8.

(5th Cir. 1992); (A12). It was the absence of evidence against the county and the sheriff that resulted in judgment against the Petitioners.

B. **SUMMARY JUDGMENT WAS PROPERLY GRANTED.**

The Petitioners assert that a single decision by a policymaker may support liability under § 1983. (Petition, pp. 12-16). Apparently, the Petitioners contend that the sheriff's decisions as to hiring and training were such a decision. However, before a person can recover because a hiring or training policy violated his rights, he must show (1) the hiring and training procedures were inadequate, (2) the policymaker was deliberately indifferent in adopting those procedures, and (3) the inadequacies in those procedures caused the injuries. City of Canton v. Harris, supra,

109 S.Ct. at 1205. The Petitioners failed in their proof on all three elements.

The county and sheriff offered evidence as to the training received by the deputies. The Petitioners offered no evidence that the training received was inadequate. They did not attempt to describe additional training that they claimed the deputies should have received. All that the Petitioners presented was the conclusory statement that the deputies should have received more training after licensing. Such a claim is insufficient. City of Canton v. Harris, Id., 109 S.Ct. at 1206.

Similarly, there was no evidence that the sheriff or the county were deliberately indifferent in relying upon the training provided by the state in its licensing process of officers and jailers. Finally, in the absence of evidence of inadequacies, the

Petitioners could not show that the inadequacies in the training actually caused the alleged deputies' indifference.

Similarly, there was no evidence that the hiring policies utilized were inadequate. The Petitioners failed to offer evidence of what procedures should have been utilized or what such procedures would or should have discovered. Instead, the Petitioners asserted it was improper to retain two deputies who had psychological problems.[2] However, there was no evidence that the medical problems of these two deputies interfered with their work, prior to or after treatment. There was no evidence that Sheriff Baumann was aware or should have been aware of the nature of the deputies'

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[2] These two deputies were not the ones involved in the alleged assault. As to that deputy, there was no evidence of any psychological problems or other indications that he was likely to make such an alleged assault.

ailments. After the deputies voluntarily obtained treatment, Sheriff Baumann received fit to work letters from the deputies' doctors. Finally, there was no evidence that the deputies' health problems were connected to the incident.

In the absence of evidence raising a material issue of fact as to the adequacy of the training or hiring policies, or as to the deliberate indifference of the Respondents in implementing such policies, or as to the policies being the moving force in causing the injuries, summary judgment was proper.

C. **PUBLIC POLICY WAS UPHELD.**

The Petitioners claim that the Court of Appeals' decision fails to achieve the purposes of the Civil Rights Act and encourages others to exercise unbridled authority and discretion in hiring and training employees. (Petition, p. 17). No

explanation of how this will occur is stated. Furthermore, the purposes of the Act were upheld. There was no abuse of governmental authority by the county or the sheriff through its policies. The Petitioners failed in meeting their burden of proof, which this Court observed would otherwise "engage the federal courts in an endless exercise of second-guessing municipal employee-training programs." City of Canton v. Harris, supra, 109 S.Ct. at 1206. The contention lacks merit.

D. **PETITIONERS HAVE MISSTATED THE COURT OF APPEALS' DECISION THAT IT FOUND EVIDENCE OF HIRING UNFIT DEPUTIES.**

The Petitioners allege that the Court of Appeals found some evidence of hiring unfit deputies. To support the allegations, the Petitioners quoted portions of the opinion out of context. (Petition, p. 19). The Court actually stated "In short, evidence from which

a jury might infer that Wilson County jail employees were unfit for service at the time they were hired is thin indeed." (Emphasis added) Benavides v. Wilson County, supra, 955 F.2d at 974. (A25) The Court added "There is no evidence that Schwertlech's and Urbanczyk's mental disorders interfered with their work, even before they were treated." Id.

The Petitioners misstated the opinion. Whatever the deputies' medical problems were, there was never any evidence that it rendered them unfit or played any role in causing Mr. Benavides' injuries.

E. THE COURT OF APPEALS MADE NO ERRONEOUS FINDINGS.

The Petitioners contend that the Court of Appeals made two erroneous findings. (Petition, pp. 20-22). The Petitioners fail to explain how these findings had any impact upon the correctness of the Court of Appeals' decision, let alone warrant the exercise of

this Court's jurisdiction. Moreover, the Petitioners again mischaracterized the Court of Appeals' decision. The opinion was discussing deliberate indifference and not whether and when the deputies were cured. Indeed, the Court had previously stated "There was evidence from which a jury could reasonably conclude that Schwartlech and Urbanczyk both suffered from psychological disorders before the accident." Id. at 971, (A7). The discussion was whether the sheriff could have inferred that the deputies were unfit for work. There was no such evidence.

F. **THE LOWER COURTS DID NOT INVADE THE PROVINCE OF THE JURY.**

The Petitioners assert that the lower courts weighed evidence and invaded the province of the jury. (Petition, pp. 22-23). The Petitioners fail to state what issues or material facts were disputed. Both the district court and Court of Appeals acted

properly in concluding that there was no genuine issue of material fact as to the liability of the Respondents.

CONCLUSION

From their initial pleading to their brief in the Fifth Circuit, the Petitioners erroneously sought to hold the county and the sheriff vicariously liable for the alleged conduct of the deputies. (Petitioner's Original Complaint, pp. 6-7); (Petitioner's Brief in the Court of Appeals for the Fifth Circuit, p. 25). However, that is not the standard for liability under 42 U.S.C. § 1983. Monell v. Department of Social Services of the City of New York, 436 U.S. 690, 98 S.Ct. 2018, 2036-2037, 56 L.Ed.2d 611 (1978). There was no evidence to support the Petitioners' accusations.

The petition for writ of certiorari should be denied.

Respectfully submitted,

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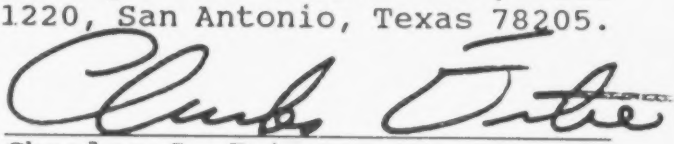
CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of July, 1992, a true and correct copy of the foregoing document was sent by Certified Mail, Return Receipt Requested to Mr. George Watts Mauze, II, Attorney for Petitioners, 111 Soledad, Suite 1220, San Antonio, Texas 78205.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